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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:

Amendment of Section 73.622(b)
Table of Allotments, Digital
Television Broadcast Stations.
(Panama City, Florida)

MM Docket No. 99-318
RM-9745

TO: CHIEF, VIDEO SERVICES DIVISION

MOTION TO ACCEPT SUPPLEMENTAL COMMENTS

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3 (1998), Emmis Television License Corporation of Mobile ("Emmis") hereby requests acceptance of the Supplemental Comments attached hereto.¹

By way of background, Waitt License Company of Florida, Inc. ("Waitt"), licensee of WPGX(TV), Panama City, Florida, filed a Petition for Rulemaking ("Petition") on June 24, 1999, seeking the amendment of the DTV Table of Allotments to substitute Channel 9 for Channel 29 at Panama City, Florida. The Commission released a *Notice of Proposed Rulemaking* on November 1, 1999. Emmis filed comments on December 22, 1999, showing that the proposed allocation would cause interference to the DTV operation of its WALA-TV, Mobile, Alabama, as proposed in a pending application. Waitt filed reply comments on January 7, 2000, to which the Supplemental Comments are directed.

While Emmis recognizes that Section 1.415(d) of the Commission's rules does not contemplate supplemental comments unless "requested or authorized," Emmis respectfully submits that acceptance of the Supplemental Comments is appropriate because they provide

¹ An original and four copies of the Supplemental Comments are being filed concurrently herewith.

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important information that will contribute to informed decision-making in this proceeding. Specifically, the Supplemental Comments provide data in response to Waitt's contention in its reply comments that service improvements would result from operation of both WPGX(TV) and WALA-TV on DTV Channel 9. The Supplemental Comments show that the two stations, operating on their currently-allotted DTV channels, would in the aggregate provide service to significantly more viewers than would be the case if they both operated on DTV Channel 9. This information obviously bears on the efficient use of the spectrum and maximization of service, both crucial issues to implementation of DTV service.

The Commission has previously accepted comments not authorized by Section 1.415 in allotment proceedings where acceptance would "enable us to resolve [the] proceeding on the basis of a complete record," *Nikiski, Alaska*, 12 FCC Rcd 2969, n.2 (1997).

For the reasons stated, Emmis Television License Corporation of Mobile seeks permission to submit the Supplemental Comments tendered concurrently herewith.

Respectfully submitted,

**EMMIS TELEVISION LICENSE
CORPORATION OF MOBILE**

By: 

John E. Fiorini III
Lee G. Petro

GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7100

Its Attorneys

February 4, 2000

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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<i>In re:</i>	}	
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Amendment of Section 73.622(b)	}	MM Docket No. 99-318
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<u>(Panama City, Florida)</u>	}	

TO: CHIEF, VIDEO SERVICES DIVISION

**SUPPLEMENTAL COMMENTS
OF
EMMIS TELEVISION LICENSE CORPORATION OF MOBILE**

Emmis Television License Corporation of Mobile ("Emmis"), the licensee of Station WALA(TV), Mobile, Alabama, hereby submits these Supplemental Comments with respect to the proposed amendment of the DTV Table of Allotments to substitute DTV Channel 9 for Channel 29 at Panama City, Florida. This proposal was set forth in a Petition for Rulemaking ("Petition") submitted by Waitt License Company of Florida, Inc. ("Waitt") on June 24, 1999, and proposed in the *Notice of Proposed Rulemaking* in the above-captioned proceeding, DA 99-2303 (rel. Nov. 1, 1999) ("NPRM").¹

Waitt filed supportive comments on November 9, 1999, and Emmis filed initial Comments on December 22, 1999. Waitt filed Reply Comments on January 7, 2000, to which these Supplemental Comments are directed.

The Engineering Statement appended to Waitt's Reply Comments shows, *inter alia*, that operation of both WALA and WGPX on DTV Channel 9 would result in a net increase in service to 214,400 persons over the FCC "baseline" populations. What that Engineering Statement did not disclose, however, is that still more persons would be served by the two stations operating

¹ A motion to accept these Supplemental Comments is being filed concurrently herewith.

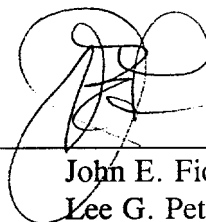
with maximized facilities *on their currently-allotted channels*. As the attached Engineering Statement shows, operation of the stations in that manner would provide a net increase in service to 249,900 persons (an additional 35,500) over the baseline populations. Thus, operation of the two stations on their currently-allotted DTV channels is clearly in the public interest because it represents the most efficient use of the spectrum and will provide service to the greatest number of persons.

As a final matter, Emmis wishes to respond briefly to Waitt's insinuations of impropriety. Emmis is seeking to do nothing more than to maximize and protect its DTV service on the channel which the Commission has allotted to WALA-TV for such service. Emmis has no objection to Waitt's providing DTV service in any manner and on any channel that it chooses, so long as Emmis's ability to provide service is not adversely affected.² To suggest that Emmis has somehow acted improperly is arrant nonsense.

Respectfully submitted,

**EMMIS TELEVISION LICENSE
CORPORATION OF MOBILE**

By: _____



John E. Fiorini III
Lee G. Petro
Gardner, Carton & Douglas
1301 K Street, N.W. - East Tower
Suite 900
Washington, D.C. 20005

Its Attorneys

February 4, 2000
DC01/324250.1

² Waitt suggested in its Petition that it was seeking a modified DTV allotment because its existing allotment (Channel 29) is adjacent to its NTSC channel (28). Emmis showed in its initial Comments that there are 190 "n+1" DTV allotments in the Table, but that in any case Channel 26 would be available to WGPX for DTV operation. Waitt then responded in its Reply Comments that cost savings were motivating its desire for Channel 9.

**EXHIBIT E-S
ENGINEERING STATEMENT
RE: SUPPLEMENTAL COMMENTS
IN MM DOCKET 99-318**

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Prepared by
Lohnes and Culver Washington, D.C.

**EXHIBIT E-S
ENGINEERING STATEMENT
RE: SUPPLEMENTAL COMMENTS
IN MM DOCKET 99-318**

INTRODUCTION

This statement was prepared on behalf of Emmis TV License Corp. Of Mobile, ("EMMIS") licensee of television broadcast station WALA-TV. It supplies technical information in support of supplemental comments in MM Docket 99-318. The NPRM in MM Docket 99-318 describes a petition by Waitt License Company of Florida, Inc. ("WAITT") that proposes to change the DTV channel allotted to WPGX from Channel 29 to Channel 9. It has been demonstrated in direct comments in this proceeding that the proposed change will impact the DTV Allotment of Channel 9 to WALA-TV in Mobile, Alabama.

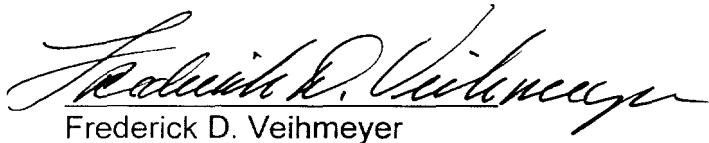
SUPPLEMENTAL COMMENTS

These supplemental comments are offered in response to a tabulation submitted by WAITT'S consulting engineer in reply comments in MM Docket 99-318. The tabulation appearing on page 5 of the engineering statement of WAITT'S consultant is a comparison of calculations of the interference-free service for the proposed maximized operation of WALA-DT, now pending at the Commission, without and with taking into account interference from proposed WPGX-DT and similarly the interference-free population for the WPGX-DT proposal without and with taking into account the WALA-DT operation as proposed in the pending application. The tabulation demonstrates that WALA-DT as proposed receives interference from WPGX-DT, as proposed on Channel 9, to a population of 48,700, 4.2% of the interference-free service and that WPGX-DT as proposed on Channel 9 will receive interference from WALA-DT, as proposed, to a population of 26,600, 7.7% of the interference-free service. The tabulation also demonstrates a net improvement in DTV service to a population of 214,400 with respect to FCC Appendix B baseline populations.

Attached to this statement as Figure 1 is a copy of the tabulation described above that has been expanded to show a comparison of WALA-DT as proposed in their pending

application with a proposed maximized operation of WPGX-DT on Channel 29, the channel allotted to WPGX in Appendix B of the Commission's Report and Order. It was demonstrated in Emmis's direct comments in this proceeding that WPGX can be maximized on Channel 29 in compliance with the Commission's de minimis interference criteria. Figure 1 demonstrates that interference to WALA-DT and WPGX-DT from the opposing proposals would be zero, which is obvious due to the channel relationship and that the net service improvement with respect to FCC Appendix B allotment baseline populations is 249,900 resulting in interference-free digital television service to an additional population of 35,500.

Respectfully submitted,
LOHNES AND CULVER



Frederick D. Veihmeyer

January, 2000

FIGURE 1

DTV POPULATION CALCULATIONS

	Amended WALA-DT CH. 9 124 kW, 346 m		Ch. 9 100 kW (MAX-DA), 207m		Maximized WALA-DT CH. 9 124 kW 346m		Maximized WPGX-DT CH. 29 1000 kW 228m	
	(Thous.)	(%)	(Thous.)	(%)	(Thous.)	(%)	(Thous.)	(%)
A) Interference-free service w/o regard to interference from the opposing proposal	1163.9	(100)	344.1	(100)	1164.3	(100)	304.6	(100)
B) Interference from the opposing proposal	48.7	(4.2)	26.6	(7.7)	0		0	(0)
C) Net service with interference from the opposing proposal	1115.2	(95.8)	317.5	(92.3)	1164.3	(100)	304.6	(100)
D) Service improvement with respect to FCC Appendix B allotment baseline w/o regard to interference from the opposing proposal	156.6		133.1		156.3		93.6	
E) Service improvement with respect to FCC Appendix B allotment baseline with regard to interference from the opposing proposal	107.9		106.5		156.3		93.6	
Total Service Improvement 214,400				Total Service Improvement 249,900				

Prepared by
Lohnes and Culver Washington, D.C.
January, 2000

CERTIFICATE OF SERVICE

I, Donna Fleming, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 4th day of February, 2000 caused to be sent by first-class U.S. mail, postage-prepaid, or by hand delivery (as shown), a copy of the foregoing "Motion To Accept Supplemental Comments" to the following:

Mr. H. John Morgan*
Assistant Chief
Video Services Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

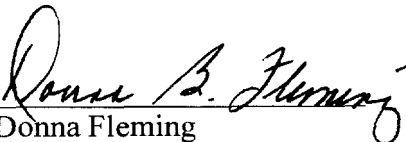
Ms. Nazifa Naim*
Video Services Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Ms. Pamela Blumenthal*
Video Services Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

James A. Koerner, Esquire
Koerner & Olender, P.C.
5809 Nicholson Lane, Suite 124
North Bethesda, MD 20852-5706

Lawrence Bernstein, Esquire
1818 N. Street, NW, Suite 700
Washington, D.C. 20036

*Hand Delivery


Donna Fleming